

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Shasta)

In re R. G., a Person Coming Under the
Juvenile Court Law.

C060976

THE PEOPLE,

(Super. Ct. No.
08JDSQ2768802)

Plaintiff and Respondent,

v.

R. G.,

Defendant and Appellant.

Following a contested jurisdictional hearing in Contra Costa Superior Court case number J08-01823, the Contra Costa County Juvenile Court found that the minor, R.G., was within the provisions of Welfare and Institutions Code section 602 in that he had committed the crime of possessing marijuana with the intent to sell. (Health & Saf. Code, § 11359.) The minor was

detained in juvenile hall pending transfer to Shasta County, where he was committed to the Crystal Creek Boys' Camp by the Shasta County Juvenile Court.

On appeal, the minor contends the juvenile court failed to determine whether he was eligible for deferred entry of judgment (DEJ). We agree and remand the matter to the juvenile court.

BACKGROUND

On November 6, 2008, the minor was stopped in Antioch, California, for driving a truck with expired registration tags. As the officer approached the vehicle, he smelled burnt marijuana. He asked the minor for his driver's license, which the minor was unable to produce. At the officer's request, the minor stepped out of the truck and consented to a search of his person.

In the minor's left front pocket, the officer found eight plastic bags containing what later proved to be a total of 4.5 grams of marijuana. The officer also found a small "Ziploc" bag containing approximately 30 empty plastic bags. All of the plastic bags were marked with the image of an eight ball. In the minor's right front pocket, the officer found \$716 in cash, comprised of bills in small denominations.

At the jurisdictional hearing, the juvenile court heard testimony from the officer at the scene, as well as the criminalist who tested and weighed the marijuana. An expert in possessing marijuana for sale also testified and concluded that based on his experience, the marijuana found on the minor's person was intended for sale. After considering the evidence,

the juvenile court sustained the petition. Because the minor was a resident of Shasta County, he was detained in juvenile hall pending his return to Shasta County.

Once returned to Shasta County, the minor appeared before the Shasta County Juvenile Court for disposition. The juvenile court considered the report and recommendation made by the Contra Costa County Probation Department and committed the minor to the Crystal Creek Boys' Camp.

DISCUSSION

The minor's sole contention on appeal is that the juvenile court failed to consider his eligibility for the DEJ program. We agree.¹

When a minor faces Welfare and Institutions Code section 602 proceedings for a felony offense, the prosecutor must review the file to determine whether the minor meets the qualifications for DEJ. (Welf. & Inst. Code, § 790.)²

If the court grants DEJ, the minor admits the allegations in the petition and waives time for pronouncement of judgment. The court then places the minor on probation. (§ 791, subd. (a)(3).) If the minor successfully completes probation,

¹ At the outset, we reject the People's contention that the minor forfeited the error by failing to object and that the court implicitly rejected DEJ as improper. The court had a mandatory duty to either grant DEJ or hold a hearing on the matter, neither of which occurred. (*In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123.)

² All further statutory references are to the Welfare and Institutions Code.

the charges must be dismissed. (*Ibid.*) The arrest leading to the charges is then deemed not to have occurred, and the records of the proceeding are sealed. (§ 793, subd. (c).)

If the minor is found eligible, the prosecutor must file a declaration stating the grounds for this determination and provide written notification to the minor explaining the procedure. (§§ 790, subd. (b), 791, subd. (a).)

If the minor consents and waives the right to a speedy jurisdictional hearing, the judge may summarily grant DEJ or refer the matter to the probation department for further evaluation. (§ 791, subd. (b).) The court has discretion to grant or deny DEJ after receiving the probation report. (*In re Sergio R.* (2003) 106 Cal.App.4th 597, 605.)

In exercising its discretion, the juvenile court must determine ““whether the minor will derive benefit from ‘education, treatment, and rehabilitation’ rather than a more restrictive commitment. [Citations.]”” [Citation.]” (*In re Luis B., supra*, 142 Cal.App.4th at p. 1123.) If the district attorney fails to determine the minor’s eligibility and the juvenile court does not exercise its discretion, then the findings and dispositional orders must be set aside and the case sent back for compliance with the DEJ procedure. (*Ibid.*)

As the minor correctly points out, there is no evidence the district attorney ever determined whether the minor was eligible for DEJ, and the juvenile court made no mention of DEJ at the disposition hearing. Accordingly, the minor asks us to set aside the court’s orders and remand for further proceedings in

compliance with the DEJ provisions of the Welfare and Institutions Code.

The People argue the minor's claim is without merit as he was not eligible for DEJ because of his repeated failures on probation. Section 790 prohibits a minor who has had his or her probation previously revoked from participating in the DEJ program. There is no evidence in the record that the minor's probation was ever revoked. Accordingly, the People's argument is not well-taken.

Two errors were committed in this case—the district attorney and the court both failed to make the appropriate DEJ determinations before the jurisdictional hearing, and the juvenile court never made findings regarding whether the minor would be given DEJ. These errors require us to remand the matter to the juvenile court “for further proceedings in compliance with section 790 et seq., and [California Rules of Court,] rule [5.800].”³ (*In re Luis B.*, *supra*, 142 Cal.App.4th at p. 1123.)

DISPOSITION

The judgment is reversed, and the case is remanded back to the juvenile court for further proceedings consistent with section 790 et seq. and California Rules of Court, rule 5.800. If, as a result of those proceedings, the juvenile court grants DEJ to the minor, it shall issue an order vacating the findings

³ California Rules of Court, rule 5.800 spells out, among other things, the procedures relating to DEJ.

and orders. If the juvenile court denies DEJ to the minor, it shall make its order continuing in effect the judgment.

RAYE, Acting P. J.

We concur:

BUTZ, J.

CANTIL-SAKAUYE, J.